

Senate Bill No. 296

Passed the Senate June 30, 2005

Secretary of the Senate

Passed the Assembly June 20, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 16350 of the Probate Code, relating to trusts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 296, Campbell. Trusts.

Existing law generally requires a trustee to allocate money received from an entity to income. However, existing law requires a trustee to allocate money received in total or partial liquidation of an entity to principal. Existing law also provides that money is received in partial liquidation if the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's year end financial statements immediately preceding the initial receipt.

This bill would revise the latter provision to specify that money is received in partial liquidation if the total amount of money and property received by all owners, collectively, in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as determined in the manner described above. The bill would also provide that if that receipt is allocated between December 2, 2004, and the operative date of this bill, a trustee shall not be liable for allocating the receipt to income if the amount received by the trustee, when considered together with the amount received by all owners, collectively, exceeds 20% of the entity's gross assets, but the amount received by the trustee does not exceed 20% of the entity's gross assets.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 16350 of the Probate Code is amended to read:

16350. (a) For the purposes of this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust

fund, or any other organization in which a trustee has an interest other than a trust or decedent's estate to which Section 16351 applies, a business or activity to which Section 16352 applies, or an asset-backed security to which Section 16367 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate to principal the following receipts from an entity:

(1) Property other than money.

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.

(3) Money received in total or partial liquidation of the entity.

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) For purposes of paragraph (3) of subdivision (c):

(1) Money is received in partial liquidation (A) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation, or (B) if the total amount of money and property received by all owners, collectively, in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's yearend financial statements immediately preceding the initial receipt. If that receipt is allocated between December 2, 2004, and the operative date of the act adding this sentence, a trustee shall not be liable for allocating the receipt to income if the amount received by the trustee, when considered together with the amount received by all owners, collectively, exceeds 20 percent of the entity's gross assets, but the amount received by the trustee does not exceed 20 percent of the entity's gross assets.

(2) Money is not received in partial liquidation, nor may it be taken into account under clause (B) of paragraph (1), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary is required to pay on taxable income of the entity that distributes the money.

(e) A trustee may rely on a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of

directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to minimize the number of people adversely affected by further application of the appellate court's rationale in *Estate of Thomas* (2004) 124 Cal.App.4th 711, which will produce results in other controversies that are manifestly unfair to trust remainder beneficiaries if it is applied, it is necessary that this bill take effect immediately.

Approved _____, 2005

Governor